



Westlands Water District

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June 4, 1996

The Honorable Dianne Feinstein
United States Senator
330 Hart Senate Office Building
Washington DC 20510

Re: San Luis Drain Issues

Dear Senator Feinstein:

I am in receipt of a copy of a letter, dated May 28, 1994, from Thomas J. Graff to you regarding issues related to the San Luis Drain. Mr. Graff's letter contains a number of erroneous statements, and I am writing in hopes of clarifying Westlands Water District's position on this matter.

Mr. Graff's letter states that "the immediate issue for consideration by you involves a request, emanating from growers on the West Side, for financial relief from obligations they have incurred to United States taxpayers." To the contrary, the District is not seeking relief from a financial obligation; instead it has acquiesced to a solution proposed by the Bureau of Reclamation, under the direction of former Commissioner Dan Beard, to resolve a conflict regarding the District's obligation to repay the costs of Kesterson cleanup and related expenditures. It is important to emphasize that the report proposing this solution was approved by the Secretary's office and the Office of Management and Budget.

The District has consistently maintained that these costs are not reimbursable because, among other reasons, they were incurred for actions unrelated to the provision of any service to the District by Reclamation. The District was not a party to the decision to make Kesterson Reservoir the terminus of the San Luis Drain. Nor was it a party to the decision to use Kesterson Reservoir for a wildlife refuge. It was these decisions which led to the ultimate closure of the Drain and the need to incur the cleanup costs.

For these reasons, among others, the Citizens Advisory Committee of the San Joaquin Valley Drainage Program, concluded that Reclamation should bear principal responsibility for Kesterson cleanup costs. In May 1988, the committee issued its Policy

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Statement on Repayment of Kesterson Reservoir Cleanup and the San Joaquin Valley Drainage Program Costs, which states, in pertinent part:

The committee believes that the principal responsibility for the costs of cleanup of Kesterson Reservoir should be borne by the U.S. Bureau of Reclamation. The Bureau, in conjunction with the U.S. Fish and Wildlife Service, chose Kesterson Reservoir as an appropriate site for the disposal of subsurface agricultural drainage from the Westlands Water District portion of the San Luis Unit. Moreover, the Bureau has been collecting drainage fees for nearly a decade from all the San Luis Unit contractors, without apparent benefit for those contractors. (On the other hand, the level of the current drainage fee [50 cents per acre foot] is unlikely to be sufficient to meet the actual costs of handling the Units's drainage problems.) Finally, the contractors had relatively little influence over where their drainage was disposed of. For all these reasons and others, the committee believes that the equitable resolution of the Kesterson repayment question is to have the Bureau absorb the lion's share of Kesterson cleanup costs, without reimbursement from water users.

Mr. Graff was a member of the Citizens Advisory Committee, and he signed the Policy Statement without apparent objection to its conclusion concerning the repayment of Kesterson cleanup costs.

Because of the conflict concerning the District's repayment obligation, in 1990 Congress directed Reclamation to prepare a report analyzing the repayment issue and refrain from collecting these costs until further direction was provided by Congress. In February 1995, Reclamation submitted to the appropriate committees of the House and Senate its report, which contained a proposed repayment alternative. In an effort to resolve the repayment issues without the need for litigation, the District has agreed with the Clinton administration to support Reclamation's repayment alternative.

With respect to Mr. Graff's discussion of ongoing litigation concerning Reclamation's obligation to provide drainage, it must first be noted that the District has not joined

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"constituent growers"¹ and the "so-called Exchange Contractors" in federal court litigation against Reclamation. Quite the opposite, the "massive damage claims" were filed by water users against Reclamation and the District as codefendants. In the action brought by members of the Exchange Contractors, the District intervened as a defendant in support of Reclamation. It is correct that the District opposed Reclamation in its efforts to establish that it has become impossible, both legally and factually, to complete the San Luis Drain; however, the District took this position, in opposition to Reclamation's asserted defense, only to preserve its rights. In addition, subsequent to the entry of judgment on this issue, the District has been working cooperatively with Reclamation as a co-defendant in an effort to resolve the underlying claims for damages and has agreed to assume responsibility for the costs of preparing the environmental impact report/statement required by the State Water Resources Control Board as part of the permit application process.

Although resolution of the repayment dispute between the District and Reclamation is not totally unrelated to the litigation filed by water users and the Exchange Contractors against Reclamation and the District, the repayment alternative proposed by Reclamation is a fair and just settlement of the dispute. Little would be accomplished by leveraging, as Mr. Graff proposes, resolution of that dispute by demanding that interested parties ignore an alternative solution to the drainage problem which the environmental review process may demonstrate is environmentally and economically feasible. Such leveraging would only prolong the ongoing litigation and resolution of the drainage repayment dispute.

If I may provide any additional information to you on this issue, please contact me at your convenience.

Very truly yours,



David Orth
General Manager

¹ Parenthetically, it must also be noted that Kenneth Khachigian is not the lead attorney for "drainers in Westlands." Indeed, his involvement in matters related to these issues has been extremely limited.